



LANTERMAN, PETRIS, SHORT ACT PROVISIONS PREEMPTED (OR PARTIALLY PREEMPTED) BY HIPAA

California Welf. & Inst. Code Section or Subdivision Citation	Section Summary	Follow Corresponding HIPAA Regulation Citation(s) Only [Unless partial preemption]
5328(j)	<p>“To the attorney for the patient in any and all proceedings upon presentation of a release of information signed by the patient, except that when the patient is unable to sign the release, the staff of the facility, upon satisfying itself of the identity of the attorney, and of the fact that the attorney does represent the interests of the patient, may release all information and records relating to the patient except that nothing in this article shall be construed to compel a physician, licensed psychologist, social worker with a master's degree in social work, licensed marriage and family therapist, nurse, attorney, or other professional person to reveal information that has been given to him or her in confidence by members of a patient's family.”</p>	<p>Partial preemption.</p> <p><u>In instances where the patient's signed release is available:</u></p> <p>Welfare and Institutions Code section 5328(j) (by operation of HIPAA privacy regulations section 164.512(a)(1)).</p> <p><u>In instances where the patient's signed release is not available:</u></p> <p>HIPAA privacy regulations sections 164.502, 164.164.508.</p>
5328(r)	<p>“When the patient, in the opinion of his or her psychotherapist, presents a serious danger of violence to a reasonably foreseeable victim or victims, then any of the information or records specified in this section may be released to that person or persons and to law enforcement agencies as the psychotherapist determines is needed for the protection of that person or persons.</p> <p>For purposes of this subdivision, "psychotherapist" means anyone so defined within Section 1010 of the Evidence Code.”</p>	<p>Partial preemption.</p> <p><u>When information that the patient presents a serious danger of violence is not learned: (1) in the course of treatment to affect the propensity to commit the criminal conduct that is the basis for the disclosure or (2)</u></p>

5328(r) (cont.)		<p><u>through a request by the individual to initiate or to be referred for the treatment, counseling, or therapy:</u></p> <p>Welfare and Institutions Code Section 5328(r) and HIPAA privacy regulations section 164.512(j)(1)(i).</p> <p><u>When information that the patient presents a serious danger of violence is not learned: (1) in the course of treatment to affect the propensity to commit the criminal conduct that is the basis for the disclosure or (2) through a request by the individual to initiate or to be referred for the treatment, counseling, or therapy:</u></p> <p>HIPAA privacy regulations section 164.502, 164.508.</p>
5328.06	<p>“Information and records may be disclosed to the protection and advocacy agency established in this state to fulfill the requirements and assurances of the federal Protection and Advocacy for the Mentally Ill Individuals Act of 1986, for the protection and advocacy of the rights of individuals identified as mentally ill.”</p>	<p><u>Total preemption.</u></p> <p>HIPAA privacy regulation sections 164.502(a)(1), 164.508(a)(1).).</p>
5328.4	<p>“The physician in charge of the patient, or the professional person in charge of the facility or his or her designee, when he or she has probable cause to believe that a patient while hospitalized has committed, or has been the victim of various enumerated crimes shall release information about the patient to governmental law enforcement agencies; may release information if has probable cause to believe that a patient, while hospitalized has committed, or has been the victim of assault or battery.</p>	<p><u>Total preemption.</u></p> <p>HIPAA privacy regulations sections 164.502, 164.508.</p>

5328.4 (cont.)	Release limited solely to information directly relating to the factual circumstances of the commission of the enumerated offenses and shall not include information relating to the mental state of the patient or the circumstances of his or her voluntary or involuntary admission, commitment, or treatment. Section not an exception to Article 7 of the Evidence Code.”	
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